IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 110 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LABOUR ENFORCEMENT OFFICER (CENTRAL)

Versus

M/S. V.R. PATEL

Appearance:

1. Criminal Appeal No. 110 of 1991

MR MR SHAH for Petitioner No. 1

MR KG SUKHWANI for Respondent No. 1-2

MR SS PATEL, ADDL. PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 12/03/2003

ORAL JUDGEMENT

1. The Labour Enforcement Officer (Central) has filed this appeal challenging the order of discharge and

consequential acquittal dated 30th November 1989 passed by Judicial Magistrate, First Class, Gandhinagar below application at Exh. 8 in Criminal Case No. 3975/85.

2. The appellant, who is the original complainant of the aforesaid criminal case, had filed a complaint against the present respondents No. 1 and 2 under the provisions of section 22.A of the Minimum Wages Act, 1949 [hereinafter referred to as the Act] and for committing breach of rule 22(1), 26(1), 26(5), 25(2) and 21(4) of the Minimum Wages (Central) Rules 1950 [hereinafter referred to as the Rules]. According to the complainant, he was appointed as Labour Enforcement Officer by the Central Government and he was, at the relevant time, working in the office of the Assistant Commissioner of Labour at Ahmedabad. The present respondents No. 1 and 2 were entrusted with the contract of constructing 24 staff quarters meant for Geological Survey of India. The complainant, i.e. the present appellant, visited the site for the purpose of inspection, and he found that no notice was displayed at the main entrance of the office of the establishment; that there was no rate of minimum wages paid to the labourers mentioned; that no names and address were mentioned, and no provisions of the Act as well as the Rules were mentioned. By this, the respondents No. 1 and 2 had committed breach of the aforesaid rules of the Rules for which they were liable to be prosecuted under the provisions of the Act. The case against the respondents No. 1 and 2 was filed in he Court of JMFC, Gandhinagar, and it was numbered as Criminal Case No. 3975 of 1985. The learned Magistrate issued summons and in response to the summons, they appeared before the trial Court.

2.1. On behalf of the respondents No. 1 and 3, an application at Exh. 8 was submitted by their advocate, praying for their discharge from the case on the ground that the learned Magistrate has no jurisdiction to entertain the complaint. The learned Magistrate, after hearing both the sides, and after taking into consideration the written submissions filed on behalf of the complainant as well as the accused, granted the application, vide the aforesaid order, and directed that the respondents No. 1 and 2 be discharged from the case. According to the learned Magistrate. the complainant had no authority to file the complaint in question. In these circumstances, the appellant-original complainant, has approached this Court by way of this appeal.

3. I have heard Mr. M.R. Shah for the appellants, Mr. Sukhwani for the respondents No.1 and 2 and Mr.

S.S. Patel for the respondent No.3.

4. A similar question had arisen before this Court on an earlier occasion, and the learned advocate for the respondents No. 1 and 2 has placed reliance on the judgments rendered by the learned Single Judges of this Court in the case of O.P. Chauhan vs. M/s. V.R. Patel in Criminal Appeal No. 549 of 1987 and in the case of M/s. V.R. Patel vs. Mr. O.P. Chauhan in Spl. Criminal Application No. 971 of 1990 dated 8th July 1994 and 5th November 1996 respectively. The question that was under consideration before this Court on the earlier occasions, and again today before me, is: whether the Labour Enforcement Officer (Central) is authorized to file complaint under the provisions of the Act in respect of the work concerning the Central Government or any of its Department or Corporation. In the present case, the respondents No. 1 and 2 were entrusted with the contract of constructing staff quarters for Geological Survey of India, which is a department of the Central Government. This Court, in such situations, has held that it is the Labour Officer appointed by the State, which is the implementing authority of the provisions of the Minimum Wages Act, and not the Labour Enforcement Officer appointed by the Central Government, who can be considered to be duly appointed Inspector under section 19 of the Act and who has authority to file complaint under the provisions of section 22.A of the Act. It is an admitted position that in this case, it is the Labour Enforcement Officer (Central) who has filed the complaint in question. In view of the aforesaid decisions rendered by this Court, the complainant cannot be considered to be an authorized person to file the complaint. It may be noted here that the learned Magistrate, while passing the impugned order, has placed reliance on a decision of the Karnataka High Court in the case of T.K. Varkey reported in Labour and Industrial Cases 1985 (2) at page 2, wherein the same view has been taken. In view of the ratio laid down by these decisions, I am of the opinion that the complaint filed by the present appellant, who is Labour Enforcement Officer (Central), is not maintainable as he has no authority to do so under the provisions of the Act. In view thereof, the present appeal is dismissed.

(AKSHAY H.MEHTA, J.)
mathew